

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

CUSTOMS AND TAX ADMINISTRATION OF
THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX REFUND
SCHEME LITIGATION

MASTER DOCKET

18-md-02865-LAK

This document relates to: The cases identified in
Appendix A

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION FOR ISSUANCE OF A REQUEST FOR INTERNATIONAL JUDICIAL
ASSISTANCE TO OBTAIN EVIDENCE IN DENMARK**

Sharon L. McCarthy
Kostelanetz & Fink LLP
7 World Trade Center, 34th Floor
New York, New York 10007
Tel: (212) 808-8100
Fax: (212) 808-8108
smccarthy@kflaw.com

Alan E. Schoenfeld
Wilmer Cutler Pickering Hale and
Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Telephone: (212) 230-8800
alan.schoenfeld@wilmerhale.com

Michelle A. Rice
Kaplan Rice LLP
142 West 57th Street
Suite 4A
New York N.Y. 10019

(212)333-0227
mrice@kaplanrice.com

Mark D. Allison
Caplin & Drysdale, Chartered
600 Lexington Ave., 21st Fl.
New York, NY 10022
Phone: (212) 379-6060
Email: mallison@capdale.com

Thomas E.L. Dewey
777 Third Avenue – 37th Floor
New York, New York 10017
Tel.: (212) 943-9000
Fax: (212) 943-4325
E-mail: tdewey@dpklaw.com

Stephen D. Andrews
Amy B. McKinlay
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
amckinlay@wc.com
sandrews@wc.com

John D. Blessington (*pro hac vice*)
K&L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, MA 02111
T: 617.261.3100
F: 617.261.3175
E: john.blessington@klgates.com

Martin H. Kaplan
Kari Parks
Gusrae Kaplan Nusbaum PLLC
120 Wall Street
New York, NY 10005
T: (212) 269-1400
Mkaplan@gusraekaplan.com
Kparks@gusraekaplan.com

*Attorneys for Defendants Listed in
Appendix A*

TABLE OF AUTHORITIES

CASES

<i>Elliott Assocs. v. Republic of Peru</i> , Nos. 96 CIV. 7917 (RWS), 1997 WL 436493 (S.D.N.Y. Aug. 1, 1997).....	9
<i>In re Optimal U.S. Litig.</i> , 837 F. Supp. 2d 244 (S.D.N.Y. 2011)	9
<i>Joseph v. Gnutti Carlo S.p.A.</i> , No. 15-cv-8910 (AJN), 2016 WL 4083433 (S.D.N.Y. July 25, 2016).....	8
<i>Lantheus Medical Imaging, Inc. v. Zurich American Ins. Co.</i> , 841 F. Supp. 2d 769 (S.D.N.Y. 2012).....	8, 9
<i>Pearlstein v. BlackBerry Ltd.</i> , 332 F.R.D. 117 (S.D.N.Y. 2019)	8
<i>Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for S. Dist. of Iowa</i> , 482 U.S. 522 (1987)	9

STATUTES

28 U.S.C. § 1781	8
------------------------	---

OTHER AUTHORITIES

U.S. Dep’t of State, Office of the Legal Advisor, <i>Treaties in Force: A List of Treaties and Other International Agreements of the United States in Force on January 1, 2012</i> (2012)	9
---	---

RULES

Fed. R. Civ. P. 26.....	8
-------------------------	---

Defendants respectfully submit this memorandum of law in support of their motion (the “Motion”) for the issuance of letters of request to obtain testimony from non-party witnesses in Denmark pursuant to the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (“Hague Evidence Convention”). A proposed form of Letter of Request is attached as Exhibit 1 to the Declaration of Sharon L. McCarthy, dated February 15, 2021 (“McCarthy Decl.”). Counsel for SKAT has indicated its intent to oppose this motion.

PRELIMINARY STATEMENT

Plaintiff SKAT has brought suit in this Court to recover an alleged \$2.1 billion that it claims Defendants and others deceived it into paying in the form of refunded dividend withholding tax. Although SKAT claims it first learned of irregularities in the payment of dividend withholding tax refunds in June 2015¹, there were repeated ignored internal warnings about the severe lack of resources and internal controls within the dividend tax refund apparatus since at least 2006. Indeed, documents and witness statements reveal that years before the alleged period of conduct, SKAT was aware that it lacked the ability to independently verify the ownership of stocks associated with reclaim applications, or to confirm whether dividend taxes had in fact been withheld with respect to such stocks. SKAT knew that it was effectively refunding withholding tax reclaims blindfolded, and suspected that it was paying reclaims to shareholders not otherwise entitled to them. No matter, rather than heed the repeated warnings from within, the Danish government made the deliberate choice to continue the refund regime *because of* its attractiveness to foreign investors and *because of* a public policy preference for

¹ See, e.g., Am. Compl. ¶ 6, *Skatteforvaltningen v. Bernina Pension Plan & John van Merkensteijn*, No. 19-cv-01865, Dkt. No. 53 (S.D.N.Y. Apr. 20, 2020), McCarthy Decl. Ex. 2.

limited regulatory burdens on banking institutions. This decision goes to the heart of several limitations-related defenses raised by Defendants which, if successful, would resolve all claims raised in this litigation. SKAT's retroactive repudiation of the refund processing regime in this case also makes their allegations of fraud particularly disingenuous.

Defendants seek the assistance of this Court in issuing letters of request seeking testimony from the following nine former Ministers of Taxation (collectively, the "Ministers"):

1. Kristian Jensen
2. Troels Lund Poulsen
3. Peter Christensen
4. Thor Möger Pedersen
5. Holger K. Nielsen
6. Jonas Dahl
7. Morten Østergaard
8. Benny Engelbrecht
9. Karsten Lauritzen.

The testimony of each of the Ministers is essential to establish the full extent to which SKAT and the Ministry of Taxation were aware of the risks and problems associated with the inadequate controls, the various proposals made since at least 2006 to remedy these risks, and the decisions to ultimately reject these proposals in favor of competing public policy objectives of the Danish government.

BACKGROUND

a. SKAT Knowingly Paid Refunds Blindly

Warnings about the critically underdeveloped Danish system for dividend reclaim administration began as early as 2002, when Lisbeth Rømer, the newly-installed head of the dividend tax unit within SKAT, began sounding alarm bells.² According to Rømer, SKAT had no ability to verify whether any of the information on a reclaim application submitted by a

² SKAT has agreed to produce Lisbeth Rømer for a deposition. The date for this deposition is still being negotiated.

foreign shareholder was accurate. Specifically, SKAT had no ability to identify the foreign shareholder, whether they actually owned the shares or received the dividends in question, or whether the Danish government actually received the dividend tax withholdings for which a reclaim was being sought.³ Explained Rømer, “[t]here is no one whose work directly touched upon this situation who did not know that payments were being made blindly.”⁴

Although she had previously raised concerns to her superiors, Rømer in 2006 wrote a formal memorandum in response to a specific reclaim application by a small French company claiming to own 50% of all tradeable shares of a particular Danish security.⁵ Rømer outlined why SKAT had no ability to verify the fundamental facts alleged in the reclaim application and yet was poised to refund over a half billion Danish kroner without any real investigation.⁶ The memo was circulated up the chain of command and reviewed by several senior officials, including SKAT’s legal director, Leif Norman Jeppesen.⁷ Jeppesen, for his part, wrote his own “Early Warning” memorandum and raised additional legal concerns about beneficial ownership of dividends associated with borrowed shares, and SKAT’s lack of controls thereto.⁸ SKAT failed to act on those warnings and the reclaim was paid to the French applicant.

Around the same time, Rømer and a colleague, Jette Zester, drafted an almost 30-page set of policy proposals to close the loopholes and protect SKAT against the risks of abuse.⁹ This document, the “Problemkatalog,” was also circulated within SKAT management, where it collected dust. The suggested reforms conflicted with an overarching government policy to

³ Tr. of Episode 1, *The Secret Shareholders*, DR (Nov. 6, 2020), <https://www.dr.dk/radio/p1/dc-hemmelige-aktionaerer>, at 14:00, 18:00, McCarthy Decl. Ex. 4.

⁴ *Id.* at 7:30.

⁵ *Id.* at 16:30.

⁶ *Id.*

⁷ *Id.* at 19:00.

⁸ *Id.* at 43:00.

⁹ Tr. of Episode 2, *The Secret Shareholders*, DR (Nov. 6, 2020), <https://www.dr.dk/radio/p1/dc-hemmelige-aktionaerer>, at 2:30, McCarthy Decl. Ex. 5.

reduce administrative burdens and to attract investors.¹⁰ Instituting the critical control features that would guard against erroneous refunds would conflict with both priorities, so the Problemkatalog's proposals were abandoned in favor of encouraging investment in Denmark.

In 2010, an internal audit of SKAT's dividend withholding tax reclaim function was completed. Consistent with the prior warnings from Rømer, Jeppesen, and others, the 2010 Audit Report¹¹ made the following key observations:

- There are no automatic reconciliations in SKAT's systems between declarations and reports. No manual reconciliations occur either.¹²
- Omnibus accounts and nominee accounts mean that the real owners of the shares are not known, so refunds are paid without proof of ownership and actual distribution.¹³
- SKAT does not carry out checks on whether the investor in question is actually a shareholder in the company in question or whether the investor in question is in fact liable for tax in the foreign country. The form is reviewed by SKAT to check whether all information is included. The refund is then paid.¹⁴
- A 2005 audit of the dividend tax function warned that it was possible for dividend recipients to receive dividend tax, even if the withheld dividend tax had not been paid to SKAT.¹⁵
- SKAT lacks reporting/information to be able to calculate the correct net proceeds from the refund scheme, since refunds via the accounting scheme is not keyed-into the computer system, which makes the data material incomplete.¹⁶
- The use of Omnibus accounts means that several dividend notes are printed (SWIFT messages) for a single share. There is no check as to whether dividend tax is requested more than once per share.¹⁷

¹⁰ *Id.* at 3:30.

¹¹ SKAT initially produced only a Danish-language version of the 2010 Audit Report (the "2010 Audit Report"). A copy of that document is attached as Ex. 6 to the McCarthy Decl. On January 15, 2021, SKAT produced an English translation of the 2010 Audit Report, which is attached as Ex. 7 to the McCarthy Declaration. All references to the 2010 Audit Report are to the English translation, specifically.

¹² 2010 Audit Report, § 7.2.4, McCarthy Decl. Ex. 7.

¹³ *Id.* § 7.3.1.

¹⁴ *Id.*

¹⁵ *Id.* § 7.6.3.

¹⁶ *Id.* § 8.

¹⁷ *Id.*

The 2010 Audit Report recommended the establishment of a central process management structure, as well as the creation of a control environment that “ensures that there is consistency between declaration and reporting.”¹⁸

b. The Ministry of Tax Sat on a Solution for Three Years

One of the specific policy proposals that Rømer and others at SKAT had been advocating for years was to provide for real-time reporting of dividends to SKAT. For many years, dividend payments were reported to SKAT on an annual basis, and the report due date was not until January of the year *following* the year in which dividends were paid.¹⁹ Accordingly, it was impossible for SKAT to know, for example, in March whether a dividend reclaim application received and purportedly relating to a February dividend was genuine, or if it was a complete fabrication. Rømer and her colleagues had been trying to institute a system of real-time reporting by the banks, but they were met with resistance at every level. Finally, in 2009, the Danish parliament passed legislation granting the Minister of Taxation the authority to change, by ministerial order, the reporting deadline to provide SKAT with more timely information.²⁰

Curiously, that order was not signed until late 2012, when then-Minister of Taxation, Holger K. Nielsen, finally signed it.²¹ Between Jensen, who was minister when Parliament first granted the authority, and Nielsen, who exercised it, there were three additional Ministers. Why did none of these ministers exercise the authority and mandate real-time reporting? Each of Jensen, Poulsen, Christiansen, and Pedersen’s testimony is critical to understanding the Danish

¹⁸ *Id.* § 9.

¹⁹ Tr. of Episode 1, *The Secret Shareholders*, DR (Nov. 6, 2020), <https://www.dr.dk/radio/p1/de-hemmelige-aktionaerer>, at 12:30–20:00, McCarthy Decl. Ex. 4.

²⁰ Tr. of Episode 4, *The Secret Shareholders*, DR (Nov. 6, 2020), <https://www.dr.dk/radio/p1/de-hemmelige-aktionaerer>, at 11:00, McCarthy Decl. Ex. 8.

²¹ Tr. of Episode 6, *The Secret Shareholders*, DR (Nov. 6, 2020), <https://www.dr.dk/radio/p1/de-hemmelige-aktionaerer>, at 5:00, McCarthy Decl. Ex. 9.

government's deliberate choice not to impose burdens on the financial industry, particularly where it meant that SKAT would continue issuing dividend refunds completely blind.

c. The Ministers and their Testimony Before the Commission

All nine of the former ministers discussed herein testified recently before the Danish Commission on Inquiry into Tax (the Commission).²² The following summarizes each former minister's tenure and any public comments they have made.

Kristian Jensen	Minister of Taxation from 2004 – 2010. ²³ Testified before the Commission on November 11, 2020. ²⁴ In statements either to the Commission or to the press following his testimony, Jensen admitted that control should have been given higher priority, and in any event, investor considerations were given too much weight. ²⁵ He also confirmed a focus on attracting foreign investors through fewer burdens. ²⁶ During his tenure as minister, the Danish parliament passed legislation authorizing Jensen to demand real-time reporting of dividends by ministerial order, but Jensen never signed the order. ²⁷
Troels Lund Poulsen	Minister of Taxation from 2010 – 2011. ²⁸ Testified before the Commission on November 11, 2020. ²⁹
Peter Christensen	Minister of Taxation in 2011. ³⁰ Testified before the Commission on November 11, 2020. ³¹

²² Jakob Ussing, *Tidligere skatteminister om udbytteskandalen: Embedsværket har svigtet* [Former Minister of Taxation on the dividend scandal: The civil service has failed], DR (Nov. 25, 2020), <https://www.dr.dk/nyheder/penge/tidligere-skatteminister-om-udbytteskandalen-embedsvaerket-har-svigtet>, McCarthy Decl. Ex. 11.

²³ Emil Søndergård Ingvorsen et al., *Tidligere skatteminister om udbyttesvind: Man burde have prioriteret kontrol højere* [Former Minister of Taxation on Dividend Fraud: Control should have been given higher priority], DR (Nov. 11, 2020), <https://www.dr.dk/nyheder/penge/tidligere-skatteminister-om-udbyttesvind-man-burde-have-prioriteret-kontrol-hoejere>, McCarthy Decl. Ex. 13.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Tr. of Episode 4, *The Secret Shareholders*, DR (Nov. 6, 2020), <https://www.dr.dk/radio/p1/de-hemmelige-aktionaerer>, at 29:30, McCarthy Decl. Ex. 8.

²⁸ Ingvorsen et al., *supra* note 21.

²⁹ *Id.*

³⁰ Ingvorsen et al., *supra* note 21.

³¹ *Id.*

Thor Möger Pedersen	Minister of Taxation from approximately October 2011 – 2012. ³²
Holger K. Nielsen	Minister of Taxation from 2012 - 2013. Signed ministerial order finally requiring real-time reporting of dividends to SKAT in 2012. ³³
Jonas Dahl	Minister of Taxation from December 2013 – January 2014. ³⁴
Morten Østergaard	Minister of Taxation from February 2014 – September 2014. ³⁵
Benny Engelbrecht	Minister of Taxation from September 2014 – June 2015. ³⁶ Testified before the Commission on November 25, 2020. ³⁷ Has made statements suggesting civil servants below him failed to warn of any issues related to dividend taxes, including the rapid monthly rise in refunds issued. ³⁸
Karsten Lauritzen	Minister of Taxation from June 28, 2015 through the end of the relevant period. ³⁹ Testified before the Commission on December 8, 2020. ⁴⁰

Defendants have not been able to secure copies of the testimony of any of the foregoing, nor does it appear that such testimony was given under oath. Defendants now seek additional information from these nine former ministers. None of these former ministers is a party to this lawsuit, and all are foreign citizens and not otherwise subject to the jurisdiction of this Court. Therefore, Defendants to seek to obtain evidence under the Hague Evidence Convention.

³² Tr. of Episode 4, *The Secret Shareholders*, DR (Nov. 6, 2020), <https://www.dr.dk/radio/p1/de-hemmelige-aktionaerer>, at 47:30; Ussing, *supra* note 20.

³³ Tr. of Episode 6, *The Secret Shareholders*, DR (Nov. 6, 2020), <https://www.dr.dk/radio/p1/de-hemmelige-aktionaerer>, at 5:00, McCarthy Decl. Ex. 9.

³⁴ *List of Minister [sic] for Taxation (Denmark)*, WIKIPEDIA, [https://en.wikipedia.org/w/index.php?title=List_of_Minister_for_Taxation_\(Denmark\)&oldid=952667191](https://en.wikipedia.org/w/index.php?title=List_of_Minister_for_Taxation_(Denmark)&oldid=952667191) (last updated Apr. 23, 2020).

³⁵ *Id.*

³⁶ Ussing, *supra* note 20.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Jakob Ussing, *Tidligere skatteminister: I sidste ende er skandalerne politikernes ansvar* [Former Minister of Taxation: Ultimately, scandals are the responsibility of politicians], DR (Dec. 8, 2020), <https://www.dr.dk/nyheder/penge/tidligere-skatteminister-i-sidste-ende-er-skandalerne-politikernes-ansvar>, McCarthy Decl. Ex. 15.

Defendants may bring additional requests for assistance, but through this Motion, respectfully request that the Court issue letters rogatory to present to the Danish Ministry of Justice to obtain evidence from the individuals named herein.

LEGAL STANDARD

Letters rogatory provide the means for a court in one country to formally request a court in another country to lend it judicial assistance in obtaining evidence or performing some other judicial act. *Lantheus Medical Imaging, Inc. v. Zurich American Ins. Co.*, 841 F. Supp. 2d 769, 775-76 (S.D.N.Y. 2012). Rule 28(b)(1)(B) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1781(b)(2) authorize federal courts to issue letters rogatory to enable a U.S. litigant to obtain non-party evidence from a foreign entity. Letters may be sent directly from this Court without transmittal by the State Department. 28 U.S.C. § 1781(b)(2). In considering an application for issuance of letters rogatory, United States courts apply the discovery principles embodied by Rule 26. A party may seek discovery of “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). The party seeking discovery bears the burden of demonstrating that the evidence sought is relevant, but that burden “is not heavy.” *Pearlstein v. BlackBerry Ltd.*, 332 F.R.D. 117, 120 (S.D.N.Y. 2019). “While not ‘unlimited, relevance, for purposes of discovery, is an extremely broad concept.’” *Joseph v. Gnutti Carlo S.p.A.*, No. 15-cv-8910 (AJN), 2016 WL 4083433, at *1 (S.D.N.Y. July 25, 2016) (quoting *Chen-Oster v. Goldman, Sachs & Co.*, 293 F.R.D. 557, 561 (S.D.N.Y. 2013)). Once relevance is shown, the burden shifts to the party opposing discovery to show that the discovery is improper. *Id.*

ARGUMENT

The United States and Denmark are both signatories to the Hague Evidence Convention. U.S. Dep't of State, Office of the Legal Advisor, *Treaties in Force: A List of Treaties and Other International Agreements of the United States in Force on January 1, 2012* (2012), 398. Defendants seek evidence from the Ministers, all believed to be individuals located in Denmark, to support their defenses against the Plaintiff in these actions.

Recourse to the Hague Evidence Convention is “available whenever [it] will facilitate the gathering of evidence by the means authorized in the Convention.” *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for S. Dist. of Iowa*, 482 U.S. 522, 541 (1987). Letters rogatory are appropriately used to obtain evidence from witnesses who cannot be compelled to appear in a U.S. court. *See In re Optimal U.S. Litig.*, 837 F. Supp. 2d 244, 259 (S.D.N.Y. 2011). Where, as here, the witnesses subject to the Defendants’ motion are not parties to the lawsuit and are not otherwise subject to the jurisdiction of the U.S. court, it is appropriate to turn to the Hague Evidence Convention. *Elliott Assocs. v. Republic of Peru*, Nos. 96 CIV. 7916 & 7917 (RWS), 1997 WL 436493, at *2 (S.D.N.Y. Aug. 1, 1997); *Lantheus*, 841 F. Supp. 2d at 782 (S.D.N.Y. 2012) (“[P]arties seek, and U.S. courts will usually issue, letters rogatory where the court otherwise lacks jurisdiction to compel discovery[.]”). “The party opposing the issuance of a letter of request must show some good reason to deny the application.” *Elliott*, 1997 WL 436493, at *2.

The testimony of the Ministers is relevant to the issues raised in this matter. In particular, their testimony is critical to establishing the statute of limitations and contributory negligence defenses raised by Defendants. Defendants have reason to believe that SKAT routinely refunded dividend taxes blindly for at least a decade prior to 2015, that this fundamental disability was

known at the highest levels of the Danish government, and that instead of giving SKAT the tools to evaluate the dividend tax reclaim applications it received, the Danish authorities consciously refused to permit such evaluation to avoid the imposition of additional administrative burdens.

In short, the Ministers will help establish who knew what, and when it was known. They will confirm the variety of remedial actions proposed over the ten years leading up to the alleged discovery of fraud in June 2015. They will explain why, in the face of ever-increasing dividend reclaim tax submissions, more attention was not given to the basic need for SKAT to independently verify the ownership of stocks associated with reclaim applications or confirm whether dividend taxes had in fact been withheld with respect to such stocks. For Ministers Jensen, Poulsen, Christiansen, and Pedersen, this includes an explanation for why they failed to exercise their ministerial authority and mandate real-time reporting of dividends to SKAT. All will explain how the specific balancing of policy objectives led the Danish government, over a period of more than a decade, to eschew additional control mechanisms that would have allowed SKAT to know, very simply, whether any particular reclaim application was accurate or not. In all cases, their testimony bears on whether SKAT and the Danish government's own actions contributed to their alleged injuries, as well as the precise date on which the facts giving rise to SKAT's claims were actually known to SKAT.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court grant their Motion for Issuance of a Request for International Judicial Assistance to Obtain Evidence.

Dated: New York, New York
February 15, 2021

Respectfully submitted,

KOSTELANETZ & FINK, LLP

By: /s/ Sharon L. McCarthy
SHARON L. MCCARTHY
7 World Trade Center, 34th Floor
New York, New York 10007
Tel: (212) 808-8100
Fax: (212) 808-8108
smccarthy@kflaw.com

Attorneys for Defendants John van Merkensteijn, III, Elizabeth van Merkensteijn, Azalea Pension Plan, Basalt Ventures LLC Roth 401(K) Plan, Bernina Pension Plan, Bernina Pension Plan Trust, Michelle Investments Pension Plan, Omineca Pension Plan, Omineca Trust, Remece Investments LLC Pension Plan, Starfish Capital Management LLC Roth 401(K) Plan, Tarvos Pension Plan, Voojo Productions LLC Roth 401(K) Plan, Xiphias LLC Pension Plan

WILMER CUTLER PICKERING
HALE AND DORR LLP

By: /s/ Alan E. Schoenfeld
ALAN E. SCHOENFELD
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Telephone: (212) 230-8800
alan.schoenfeld@wilmerhale.com

Attorneys for Defendants Richard Markowitz, Jocelyn Markowitz, Avanix Management LLC Roth

*401(K) Plan, Batavia Capital
Pension Plan, Calypso Investments
Pension Plan, Cavus Systems LLC
Roth 401(K) Plan, Hadron Industries
LLC Roth 401(K) Plan, RJM Capital
Pension Plan, RJM Capital Pension
Plan Trust, Routt Capital Pension
Plan, Routt Capital Trust*

CAPLIN & DRYSDALE,
CHARTERED

By: /s/ Mark D. Allison
Mark D. Allison
CAPLIN & DRYSDALE,
CHARTERED
600 Lexington Avenue, 21st Floor
New York, New York 10022
Phone: (212) 379-6060
Email: mallison@capdale.com

*Attorneys for Defendants Robert
Klugman, RAK Investment Trust,
Aerovane Logistics LLC Roth 401K
Plan, Edgepoint Capital LLC Roth
401K Plan, Headsail Manufacturing
LLC Roth 401K Plan, The Random
Holdings 401K Plan, The Stor
Capital Consulting LLC 401K Plan*

KAPLAN RICE LLP

By: /s/ Michelle A. Rice
Michelle A. Rice
Kaplan Rice LLP
142 West 57th Street
Suite 4A
New York N.Y. 10019
(212) 333-0227
mrice@kaplanrice.com

*Attorneys for Defendants Joseph
Herman, David Zelman, Edwin
Miller, Ronald Altbach, Perry*

Lerner, Robin Jones, Ballast Ventures LLC Roth 401(K) Plan, Bareroot Capital Investments LLC Roth 401(K) Plan, Albedo Management LLC Roth 401(K) Plan, Dicot Technologies LLC Roth 401(K) Plan, Fairlie Investments LLC Roth 401(K) Plan, First Ascent Worldwide LLC Roth 401(K) Plan, Battu Holdings LLC Roth 401(K) Plan, Cantata Industries LLC Roth 401(K) Plan, Crucible Ventures LLC Roth 401(K) Plan, Monomer Industries LLC Roth 401(K) Plan, Limelight Global Productions LLC Roth 401(K) Plan, Loggerhead Services LLC Roth 401(K) Plan, PAB Facilities Global LLC Roth 401(K) Plan, Plumrose Industries LLC Roth 401(K) Plan, Pinax Holdings LLC Roth 401(K) Plan, Roadcraft Technologies LLC Roth 401(K) Plan, Sternway Logistics LLC Roth 401(K) Plan, Trailing Edge Productions LLC Roth 401(K) Plan, True Wind Investments LLC Roth 401(K) Plan, Eclouge Industry LLC Roth 401(K) Plan, Vanderlee Technologies Pension Plan, Vanderlee Technologies Pension Plan Trust, Cedar Hill Capital Investments LLC Roth 401(K) Plan, Green Scale Management LLC Roth 401(K) Plan, Fulcrum Productions LLC Roth 401(K) Plan, Keystone Technologies LLC Roth 401(K) Plan, Tumba Systems LLC Roth 401(K) Plan

DEWEY PEGNO & KRAMARSKY
LLP

By: /s/ Thomas E.L. Dewey
Thomas E.L. Dewey
777 Third Avenue – 37th Floor

New York, New York 10017
Tel.: (212) 943-9000
Fax: (212) 943-4325
E-mail: tdewey@dpklaw.com

*Attorneys for Defendant
Michael Ben-Jacob*

WILLIAMS & CONNOLLY LLP

By: /s/ Stephen D. Andrews
Stephen D. Andrews
Amy B. McKinlay
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
amckinlay@wc.com
sandrews@wc.com

*Attorneys for Defendants Sander
Gerber and Sander Gerber Pension
Plan*

K&L GATES LLP

By: /s/ John D. Blessington
John D. Blessington (*pro hac vice*)
K&L GATES LLP
State Street Financial Center
One Lincoln Street
Boston, MA 02111
T: 617.261.3100
F: 617.261.3175
E: john.blessington@klgates.com

*Attorneys for Defendants / Third-
Party Plaintiffs Acer Investment
Group LLC, American Investment
Group of New York, L.P. Pension
Plan, DW Construction, Inc.
Retirement Plan, Kamco Investments
Inc. Pension Plan, Kamco LP Profit
Sharing Pension Plan, Linden*

*Associates Defined Benefit Plan,
Moir Associates LLC 401K Plan,
Newsong Fellowship Church 401K
Plan, Riverside Associates Defined
Benefit Plan, Robert Crema, Stacey
Kaminer, Alexander Jamie Mitchell
III, David Schulman, Joan
Schulman, and Darren Wittwer*

GUSRAE KAPLAN NUSBAUM
PLLC

By: /s/ Martin H. Kaplan
Martin H. Kaplan
Kari Parks
Gusrae Kaplan Nusbaum PLLC
120 Wall Street
New York, NY 10005
T: (212) 269-1400
Mkaplan@gusraekaplan.com
Kparks@gusraekaplan.com

*Attorneys for Defendants Sheldon
Goldstein, Scott Goldstein, and the
Goldstein Law Group PC 401(K)
Profit Sharing Plan*

APPENDIX A

Defendants	Counsel	Associated Case(s)
John van Merkensteijn, III	Sharon L. McCarthy Caroline Ciraolo Nicholas S. Bahnsen Kostelanetz & Fink LLP 7 World Trade Center, 34 th Floor New York, New York 10007 Tel: (212) 808-8100 Fax: (212) 808-8108 cciraolo@kflaw.com smccarthy@kflaw.com nbahnsen@kflaw.com	19-cv-01866 19-cv-01865 19-cv-01906 19-cv-01894 19-cv-01911 19-cv-01871 19-cv-01930 19-cv-01873 19-cv-01794 19-cv-01798 19-cv-01788 19-cv-01918 19-cv-01928 19-cv-01931 19-cv-01800 19-cv-01803 19-cv-01809 19-cv-01818 19-cv-01801 19-cv-01810 19-cv-01813
Elizabeth van Merkensteijn		19-cv-01893
Azalea Pension Plan		19-cv-01893
Basalt Ventures LLC Roth 401(K) Plan		19-cv-01866
Bernina Pension Plan		19-cv-01865
Bernina Pension Plan Trust		19-cv-10713
Michelle Investments Pension Plan		19-cv-01906
Omineca Pension Plan		19-cv-01894
Omineca Trust		19-cv-01794 19-cv-01798 19-cv-01788 19-cv-01918 19-cv-01928

		19-cv-01931 19-cv-01800 19-cv-01803 19-cv-01809 19-cv-01818 19-cv-01801 19-cv-01810 19-cv-01813
Remece Investments LLC Pension Plan		19-cv-01911
Starfish Capital Management LLC Roth 401(K) Plan		19-cv-01871
Tarvos Pension Plan		19-cv-01930
Voojo Productions LLC Roth 401(K) Plan		19-cv-01873
Xiphias LLC Pension Plan		19-cv-01924
Richard Markowitz	Alan E. Schoenfeld Wilmer Cutler Pickering Hale and Dorr LLP 7 World Trade Center 250 Greenwich Street New York, NY 10007 Telephone: (212) 230-8800 alan.schoenfeld@wilmerhale.com	19-cv-01867 19-cv-01895 19-cv-01869 19-cv-01868 19-cv-01898 19-cv-10713 19-cv-01896 19-cv-01783 19-cv-01922 19-cv-01926 19-cv-01929 19-cv-01812 19-cv-01870 19-cv-01792 19-cv-01806 19-cv-01808 19-cv-01815
Jocelyn Markowitz		19-cv-01904
Avanix Management LLC Roth 401(K) Plan		19-cv-01867

Batavia Capital Pension Plan Calypso Investments Pension Plan		19-cv-01895 19-cv-01904
Cavus Systems LLC Roth 401(K) Plan		19-cv-01869
Hadron Industries LLC Roth 401(K) Plan		19-cv-01868
RJM Capital Pension Plan		19-cv-01898
RJM Capital Pension Plan Trust		19-cv-10713
Routt Capital Pension Plan		19-cv-01896
Routt Capital Trust		19-cv-01783 19-cv-01922 19-cv-01926 19-cv-01929 19-cv-01812 19-cv-01870 19-cv-01792 19-cv-01806 19-cv-01808 19-cv-01815
Rob Klugman	Mark D. Allison Caplin & Drysdale, Chartered 600 Lexington Avenue 21 st Floor New York, NY 10022 Tel: (212) 379-6000 mallison@capdale.com zziering@capdale.com	18-cv-07828 18-cv-07827 18-cv-07824 18-cv-07829 18-cv-04434
RAK Investment Trust		
Aerovane Logistics LLC Roth 401(K) Plan		18-cv-07828
Edgepoint Capital LLC Roth 401(K) Plan		18-cv-07827
Headsail Manufacturing LLC Roth 401(K) Plan		18-cv-07824

The Random Holdings 401(K) Plan		18-cv-07829
The Stor Capital Consulting LLC 401(K) Plan		18-cv-04434
Joseph Herman	Michelle A. Rice Kaplan Rice LLP 142 West 57 th Street Suite 4A New York N.Y. 10019 (212) 333-0227 mrice@kaplanrice.com	1:19-cv-01785
		1:19-cv-01781
		1:19-cv-01791
		1:19-cv-01794
David Zelman		1:19-cv-01918
		1:19-cv-01783
		1:19-cv-01798
		1:19-cv-01788
		1:19-cv-01926
Edwin Miller		1:19-cv-01922
		1:19-cv-01928
		1:19-cv-01929
		1:19-cv-01931
		1:19-cv-01809
Ronald Altbach		1:19-cv-01800
		1:19-cv-01803
		1:19-cv-01812
		1:19-cv-01818
		1:19-cv-01806
Perry Lerner		1:19-cv-01870
		1:19-cv-01792
		1:19-cv-01808
		1:19-cv-01815
		1:19-cv-01801
		1:19-cv-01810
		1:19-cv-01813
Ballast Ventures LLC Roth 401(K) Plan		1:19-cv-01781
Bareroot Capital Investments LLC Roth 401(K) Plan		1:19-cv-01783

Albedo Management LLC Roth 401(K) Plan		1:19-cv-01785
Dicot Technologies LLC Roth 401(K) Plan		1:19-cv-01788
Fairlie Investments LLC Roth 401(K) Plan		1:19-cv-01791
First Ascent Worldwide LLC Roth 401(K) Plan		1:19-cv-01792
Battu Holdings LLC Roth 401(K) Plan		1:19-cv-01794
Cantata Industries LLC Roth 401(K) Plan		1:19-cv-01798
Crucible Ventures LLC Roth 401(K) Plan		1:19-cv-01800
Monomer Industries LLC Roth 401(K) Plan		1:19-cv-01801
Limelight Global Productions LLC Roth 401(K) Plan		1:19-cv-01803
Loggerhead Services LLC Roth 401(K) Plan		1:19-cv-01806
PAB Facilities Global LLC Roth 401(K) Plan		1:19-cv-01808
Plumrose Industries LLC Roth 401(K) Plan		1:19-cv-01809
Pinax Holdings LLC Roth 401(K) Plan		1:19-cv-01810
Roadcraft Technologies LLC Roth 401(K) Plan		1:19-cv-01812
Sternway Logistics LLC Roth 401(K) Plan		1:19-cv-01813

Trailing Edge Productions LLC Roth 401(K) Plan		1:19-cv-01815
True Wind Investments LLC Roth 401(K) Plan		1:19-cv-01818
Eclouge Industry LLC Roth 401(K) Plan		1:19-cv-01870
Vanderlee Technologies Pension Plan		1:19-cv-01918
Vanderlee Technologies Pension Plan Trust		1:19-cv-01918
Cedar Hill Capital Investments LLC Roth 401(K) Plan		1:19-cv-01922
Green Scale Management LLC Roth 401(K) Plan		1:19-cv-01926
Fulcrum Productions LLC Roth 401(K) Plan		1:19-cv-01928
Keystone Technologies LLC Roth 401(K) Plan		1:19-cv-01929
Tumba Systems LLC Roth 401(K) Plan		1:19-cv-01931
Sander Gerber Sander Gerber Pension Plan	Stephen D. Andrews Amy B. McKinlay Williams & Connolly LLP 725 Twelfth Street, N.W. Washington, DC 20005 (202) 434-5000 amckinlay@wc.com sandrews@wc.com	18-cv-4899 18-cv-4899
Michael Ben-Jacob	Thomas E. L. Dewey Dewey Pegno & Kramarsky LLP 777 Third Avenue – 37th Floor New York, New York 10017 Tel.: (212) 943-9000 Fax: (212) 943-4325 E-mail: tdewey@dpklaw.com	1:18-cv-04434 1:18-cv-07824 1:18-cv-07827 1:18-cv-07828 1:18-cv-07829 1:19-cv-01781 1:19-cv-01783

		1:19-cv-01785 1:19-cv-01788 1:19-cv-01791 1:19-cv-01792 1:19-cv-01794 1:19-cv-01798 1:19-cv-01800 1:19-cv-01801 1:19-cv-01803 1:19-cv-01806 1:19-cv-01808 1:19-cv-01809 1:19-cv-01810 1:19-cv-01812 1:19-cv-01813 1:19-cv-01815 1:19-cv-01818 1:19-cv-01866 1:19-cv-01867 1:19-cv-01868 1:19-cv-01869 1:19-cv-01870 1:19-cv-01871 1:19-cv-01873 1:19-cv-01894 1:19-cv-01896 1:19-cv-01918 1:19-cv-01922 1:19-cv-01926 1:19-cv-01928 1:19-cv-01929 1:19-cv-01931
Acer Investment Group LLC	John C. Blessington K&L GATES LLP State Street Financial Center One Lincoln Street Boston, MA 02111 T: 617.261.3100 F: 617.261.3175 E: john.blessington@klgates.com	18-cv-09841 18-cv-09797 18-cv-09836 18-cv-09837 18-cv-09838 18-cv-09839 18-cv-09840 18-cv-10100 18-cv-05053
American Investment Group of New York, L.P. Pension Plan		18-cv-09841

DW Construction, Inc. Retirement Plan		18-cv-09797
Kamco Investments Inc. Pension Plan		18-cv-09836
Kamco LP Profit Sharing Pension Plan		18-cv-09837
Linden Associates Defined Benefit Plan		18-cv-09838
Moirra Associates LLC 401K Plan		18-cv-09839
Newsong Fellowship Church 401K Plan		18-cv-10100
Riverside Associates Defined Benefit Plan		18-cv-09840
Robert Crema		18-cv-09841
Stacey Kaminer		18-cv-09841 18-cv-09797 18-cv-09836 18-cv-09837 18-cv-09839
Alexander Jamie Mitchell III		18-cv-10100
David Schulman		18-cv-09840
Joan Schulman		18-cv-09838
Darren Wittwer		18-cv-09797
Sheldon Goldstein Scott Goldstein The Goldstein Law Group PC 401(k) Profit Sharing Plan	Martin H. Kaplan Kari Parks Gusrae Kaplan Nusbaum PLLC 120 Wall Street New York, NY 10005 T: (212) 269-1400 mkaplan@gusraekaplan.com	18-cv-5053

	kparks@gusraekaplan.com	
--	--	--